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May 11, 2017

RECEIVED ON:

Via Certified Mail - Return Receipt Requested

Managing Agent
Seattle Iron & Metals Corp.
601 S. Myrtle Street
Seattle WA 98108

MAY 15 2017
ORC
EPA Region 10
Office of the Regional Administrator

Re: **SECOND SUPPLEMENTAL NOTICE OF INTENT TO SUE UNDER THE
CLEAN WATER ACT**

Dear Managing Agent:

We represent Puget Soundkeeper Alliance ("Soundkeeper"), 5305 Shilshole Ave. NW, Suite 150, Seattle, WA 98107, (206) 297-7002. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days' notice of Soundkeeper's intent to file a citizen suit against Seattle Iron & Metals Corp. ("SIM Corp.") under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described below, or amend its complaint in the pending litigation to include allegations based on these violations.

SIM Corp. has violated and continues to violate the CWA (see sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342), and its NPDES Permit No. WA003196, the most recent iteration of which was issued by the Washington Department of Ecology ("Ecology") on September 16, 2013, effective October 1, 2013, as modified on August 26, 2014, and March 12, 2015 (the "Individual Permit") with respect to operations of, and discharges of stormwater, wastewater, and pollutants to waters of the state from, its facility located at 601 S. Myrtle Street, Seattle WA 98108 (the "601 Facility" or "601 site") as described herein.

SIM Corp. has violated and continues to violate the CWA and its NPDES Permit No. WAR125002, the most recent iteration of which was issued by Ecology on December 3, 2014 and took effect January 2, 2015 (the "General Permit") with respect to operations of, and discharges of stormwater and pollutants to waters of the state from its facility located at 730 S. Myrtle Street, Seattle WA 98108 (the "730 Facility" or "730 site") as described herein.

I. Individual Permit Violations at the 601 Facility.

A. Condition S1.A. numeric effluent limitation and monitoring violations.

i. SIM Corp. has violated NPDES Permit WA003196, the Individual Permit, by discharging stormwater and process wastewater to the Duwamish River with concentrations

of ammonia in excess of the 21 mg/L maximum monthly average effluent limitation established in Condition S1.A. of the Individual Permit, as shown by the monitoring data in the table below:

Table I.A.i.

<u>Month discharge occurred</u>	<u>Ammonia concentration (monthly average limit: 21 mg/L)</u>
April, 2015	23.5 mg/L
June, 2016	26.4 mg/L
January, 2017	41 mg/L

ii. Condition S2.A of the Individual Permit requires SIM Corp. to collect a sample of the 601 Facility's main yard runoff from the final treatment system (outfall 001) once per month. Condition S3.A.1 of the Individual Permit requires SIM Corp. to submit monitoring data obtained during each monitoring period to Ecology via electronic discharge monitoring reports (DMRs). The DMRs must report a value for each day sampling occurred.

SIM Corp. has violated conditions S2.A and S3.A.1 of the Individual Permit by failing to collect a sample of the 601 Facility's main yard runoff and report the monitoring data to Ecology for January, April, June, and July, 2015.

B. Condition S1.B numeric effluent limit and monitoring violations.

i. SIM Corp. has violated the Individual Permit, by discharging stormwater to the Duwamish River with concentrations of copper, lead, zinc, and turbidity in excess of the maximum daily effluent limitations established in condition S1.B. of the Individual Permit, as shown by the monitoring data in the table below:

Table I.B.

<u>Date and monitoring period discharge occurred</u>	<u>Copper Concentration (Max. Daily Effluent Limit: 14 µg/L)</u>	<u>Lead Concentration (Max. Daily Effluent Limit 81.6 µg/L)</u>	<u>Zinc Concentration (Max. Daily Effluent Limit: 117 µg/L)</u>	<u>Oil Sheen (Max. Daily Effluent Limit: No Sheen)</u>	<u>Turbidity (Max. Daily Effluent Limit: 25 NTU)</u>
February 2, 2015 1 st Quarter (sample point APL#2)	36.2 µg/L		556 µg/L	Yes	25.6 NTU
May 13, 2015 2 nd Quarter (sample point APL#2)	22.9 µg/L		168 µg/L		

point RS#2)			
May 13, 2015 2 nd Quarter (sample point APL#2)			767 µg/L
Jan. 5, 2016			176 µg/L
December 29, 2016	18.8 µg/L	211 µg/L	226 µg/L
March 15, 2017		125 µg/L	
March 29, 2017		99.9 µg/L	

In addition, SIM Corp. violated condition S1.B of the Individual Permit by discharging stormwater from its roofs and employee parking lots in excess of the condition S1.B effluent limits for copper and zinc each day on or after June 1, 2014 during which there was 0.1 inch of precipitation or more. Precipitation data from King County International Airport is appended to this notice of intent to sue and identifies these days.

ii. Condition S2.A of the Individual Permit requires SIM Corp. to collect a sample of the 601 Facility's roof and parking lot runoff at least once per calendar quarter. Samples are to be collected within 30 minutes of the start of a qualified storm (defined as storm that produces at least 0.1 inch of rain in 24 hours, and it must occur at least 24 hours after the previous storm that had produced at least 0.1 inch of rain in 24 hours of precipitation). Condition S2.A of the Individual Permit requires that the DMR clearly indicate time of sampling, weather condition, and amount of flow discharged.

SIM Corp. has violated condition S2.A of the Individual Permit by failing to collect a sample of stormwater from its roofs and employee parking lots in second and third quarters 2014, third quarter 2015, and second and third quarters 2016, and by failing to include the time of sampling, weather condition, and amount of flow discharged on its DMRs for first and second quarters 2015.

C. Violation of prohibition on contaminating stormwater with fugitive dust.

After June 1, 2014, condition S1.C of the Individual Permit prohibits discharge of stormwater contaminated by SIM Corp.'s activities from areas beyond SIM Corp.'s processing area and stormwater collection and treatment system, and requires control of polluting materials from solids tracked out on vehicle wheels (trackout), airborne dust, spills from transport vehicles, and any other source of solids carrying pollutants generated by SIM Corp.'s activities to prevent transport to neighboring public or private areas and their discharge to Seattle's stormwater conveyance system. Condition S1.C further requires SIM

Corp. to immediately control and cleanup any fugitive emissions from its processing area onto neighboring properties to prevent solids from reaching public storm drains and waters of the State.

SIM Corp. is in violation of condition S1.C because it has failed to prevent, control, and immediately cleanup fugitive emissions, dust, spills, and track out from its processing area and activities, as shown by SIM Corp.'s continued shredding and material handling operations which generate fugitive emissions and dust that contaminate off-site stormwater discharges to the Duwamish River via Seattle's storm drain system, without a cover or containment to prevent off-site migration, by Ecology's July 30, 2015 inspection report finding SIM Corp. lacked adequate measures to prevent track out and to control fugitive emissions, and that its auto shredder residue piles were insufficiently contained to prevent spills off-site, and by Soundkeeper's observations of fugitive emissions, dust, spills, and track out emanating from the Facility. These emissions, dusts, spills, and track outs are transported to neighboring properties, Seattle storm drains, and waters of the State, in violation of condition S1.C of the Individual Permit.

D. Violations of prohibition on untreated discharges, and storing and processing on docks.

Condition S1.D of the Individual Permit requires SIM to properly maintain slopes, ditches, berms, walls, pipes, and all other diversion structures; to maintain and repair as necessary the North and South Timber Docks to prevent discharge; and prohibits discharge of untreated storm or process water via sheet flow or point source directly to the Duwamish Waterway. SIM is in violation of condition S1.D because it has failed to maintain diversion structures along the shoreward side of the facility, and failed to maintain and repair the North and South Timber Docks to prevent discharge of untreated storm and process water directly to the Duwamish Waterway. Such discharges have occurred each day since October 1, 2013 during which there was 0.1 inch of precipitation or more; such dates are identified in the appended precipitation data.

E. Violations of condition prohibitions on aesthetic impairments and solid waste in the water adjacent to the facility.

Condition S1.F of the Individual Permit states "Aesthetic values of the receiving water must not be impaired. The presence of foam, off colors, or other materials or their effects which offend the senses at Outfall 001 and the mixing zone are prohibited."

Condition S5.A of the Individual Permit states that you "must handle and dispose of all solid waste material in such a manner as to prevent its entry into state ground or surface water" and that the presence "of any solid waste materials in the surface water adjacent to the facility is considered violation of this permit."

SIM has violated condition S1.F because aesthetic values of the receiving water, the Lower Duwamish River, have been and are being impaired, including by the presence of foam, off-colors, and solid waste material, including scrap metal and debris, from SIM's

facility, and from barges and loading/unloading activities at its docks, at Outfall 001 and the mixing zone. The presence of such foam has occurred on dates including April 30, 2014, July 28, 2014, August 25, 2014, September 26, 2014, and February 6, 2015. The presence of such off colors has occurred on dates including January 31, 2013, February 24, 2014, September 24, 2014, February 6 and August 11, 2015. Solid waste material, including scrap metal and debris that impair the aesthetic values of the receiving water in violation of conditions S1.F. and S5.A has been continuously present at Outfall 001 and the mixing zone and in the receiving water adjacent to the facility since October 1, 2013. Some of the aesthetic impairment in the receiving water is documented in your Near Shore Inspection Report dated November 18, 2014 and your Near Shore Loading Area Evaluation, dated July 1, 2015 ("2015 Near Shore Inspection Report"). Scrap metal and debris that contribute to the ongoing aesthetic impairment and violate Individual Permit conditions S1.F and S5.A are added each time material are loaded or unloaded at either of your docks, including on June 27, 2014, July 22, 2014, and August 11, 2015. According to your 2014 and 2015 Near Shore Inspection Reports, SIM Corp. unloads materials from barges at its south dock approximately one to two times per month. SIM Corp. has information and records that identify additional dates on which barge loading and unloading occur with more precision.

F. Violations of condition S4 operation and maintenance requirements.

Condition S4 of the Individual Permit requires SIM to operate auxiliary wastewater and stormwater treatment and control facilities when doing so is necessary to achieve compliance with the conditions of the permit. SIM is in violation of this condition because it is not operating auxiliary wastewater and stormwater treatment and control facilities as necessary to achieve compliance with the conditions of the permit, as illustrated by the numeric effluent limit violations identified in sections I.A and I.B, above, in Soundkeeper's April 30, 2014 Supplemental Notice of Intent to Sue letter to SIM, in Ecology's Notice of Violation to SIM (Docket No. 10671, dated April 29, 2014), and in subsequent DMRs and notices of noncompliance SIM submitted to Ecology, and by the discharge of 47,000 gallons of wastewater and stormwater that was not fully treated on April 19, and 22-24, 2014 (described in the email from Paul Kirkman, SIM Corp. to Ecology on April 28, 2014).

G. Violation of condition S4 bypass prohibition.

Condition S4.B of the Individual Permit prohibits a bypass which is the intentional diversion of waste streams from any portion of the treatment facility that is not in excess of the treatment system design capacity. SIM violated condition S4.B by (1) discharging 47,000 gallons of wastewater and stormwater that was not fully treated on April 19, and 22-24, 2014; and (2) the overflow bypass event between June 20 and 21, 2016 identified in Ecology's Notice of Penalty No. 13781 to SIM (dated January 24, 2017) showing 1,590 µg/L zinc, 134 µg/L copper, 20.5 mg/L TPH, and 60 mg/L TSS, all of which exceed Individual Permit limits. None of the exceptions that would preclude Ecology from taking enforcement action against SIM for these discharges apply, and, in any event, those exceptions do not apply to enforcement action by Soundkeeper.

H. Conditions S8 and S9 Phase II engineering report and compliance schedule violations.

Conditions S8 of the Individual Permit require SIM Corp. to prepare and submit a "Phase II" engineering report with plans and specification that addresses three distinct areas of SIM Corp.'s activities to Ecology by the date specified in Condition S9 of the Individual Permit, December 31, 2014. The plans and specifications (i.e. detailed design drawings to be used in construction, see WAC 173-240-020(11)), were required to comport with Washington Administrative Code Chapter 173-240, and otherwise be approvable. The three distinct areas the report must address are: (1) fugitive dust control; (2) runoff from roofs, including roofs at SIM's 701 South Orchard Street property, and runoff from employee parking lots outside of the processing area treatment system; and (3) preventing transport of solids on vehicle wheels to public roads.

Condition S9 of the Individual Permit required SIM Corp. to complete construction of a treatment system in accordance with the approved Phase II engineering report by June 1, 2015.

Condition S8.A. of the Individual Permit specifies the content of the engineering report with respect to fugitive dust. Condition S8.A. requires that the engineering report analyze all known, available, and reasonable treatment (AKART) alternatives for preventing dust emissions from the processing area, including suppression, collection, elimination, and source control. Condition S8.A. requires that the engineering report (1) include state of the art dust control technology utilized in similar facilities and available for similar industries, including shipyards; (2) include technology that is reasonable and available to use; and (3) recommend dust source control and suppression and elimination BMPs. Condition S8.A. further requires that the engineering report identify locations within and around the permitted boundaries of the facility to monitor to verify dust emissions are controlled by the BMPs, and include a monitoring plan of at least two years duration to verify the BMPs installed have controlled fugitive dust emissions.

SIM Corp. is in violation of Conditions S8.A of the Individual Permit because it has failed to prepare and submit a Phase II engineering report to Ecology that contains the required information. SIM Corp. is further in violation of Conditions S8.A of the Individual Permit because it has failed to prepare and implement dust monitoring to verify dust emissions are controlled by the BMPs. In particular, SIM Corp's dust monitoring was conducted only on two days which did not produce enough data to make determinations, SIM Corp. determined that the white boards it attempted to use to monitor dust were not effective at doing so and stopped using them after one week, SIM Corp. failed to monitor each location for at least an hour as called for by the Final Dust Monitoring Plan (2014), and "background" monitoring locations were influenced by SIM Corp. dust and were inadequately documented. Appropriate monitoring would, at a minimum, require analysis of PCB, lead, iron, and other metals in addition to particulate matter and suspended particles, would build on the air testing EPA performed at SIM in late 2010 and more recent ambient data King County collected in the vicinity of SIM, and would use more distant and carefully selected background locations to provide meaningful data.

Condition S8.B. of the Individual Permit specifies the content of the engineering report with respect to runoff from roofs and employee parking lots. Condition S8.A. requires that the engineering report evaluate and provide for complying with the effluent limits in Condition S1.B of the Individual Permit, which took effect June 1, 2014. As indicated by the effluent limit violations identified in section II.B of this letter, and SIM Corp.'s failure to employ sufficient treatment devices for the 701 Orchard Street building roof runoff. SIM Corp. has violated condition S8. and S9 by failing to evaluate, provide for and implement controls for complying with the S1.B effluent limits.

SIM Corp. has violated condition S8.A and the deadline for implementation of treatment system in condition S9 by failing to implement AKART or the required plans and specifications, as demonstrated by SIM Corp.'s failure to submit and obtain Ecology approval of the required plans, and by the findings in Ecology's July 30, 2015 inspection report (signed August 12 and 13, 2015) that the rumble pads and mister that SIM Corp. agreed to install were ineffective and not fully or properly implemented. In addition, SIM Corp. did not select the most effective rumble pads available (which are still inadequate), SIM Corp. inappropriately relies on pavement sweeping to prevent track out which is inadequate, particularly during rainy periods, and track out continues to regularly occur at the 601 Facility.

I. Violations of condition S12 stormwater pollution prevention plan requirements.

Condition S12.B.2 requires SIM Corp. to modify its stormwater pollution prevention plan (SWPPP) whenever there is a change to design, construction, or operation and maintenance that causes the SWPPP to be less effective in controlling the pollutants, and within two months of determining that the description of pollutant sources or the pollution prevention measures in the SWPPP is inadequate. Proposed modifications are to be submitted to Ecology 30 days in advance of implementing the changes unless Ecology approved immediate implementation.

SIM Corp. is in violation of condition S12.B.2 of the Individual Permit because its SWPPP is inadequate and out of date, and needed updates have not been submitted to Ecology as required. Specifically, the SWPPP fails to identify sources of PCBs, ammonia, and chemical oxygen demand; the pollution prevention measures in the SWPPP are inadequate for controlling PCBs, total petroleum hydrocarbons, and zinc from the main yard discharge, copper, zinc, oil, and turbidity from the building roofs and parking lot discharge, foamy and off-color discharges to the Duwamish River, fugitive dust emissions, pollutant track out off-site on vehicle tires, untreated discharges from the 601 Facility's docks, or scrap metal falling into the Duwamish River during barge loading and unloading; and the SWPPP has not been updated to reflect changes to administrative parking lot BMPs, such as those described in SIM Corp.'s February 18, 2015 Notice of Non Compliance letter to Ecology, or changes to dust control and track out BMPs, such as those identified in Ecology's July 30, 2015 inspection report.

J. Violations of the effluent limit for chronic toxicity.

Condition S14.B of the Individual Permit imposes the following effluent limit for chronic toxicity: No toxicity detected in a test concentration representing the chronic critical effluent concentration (CCEC) of 3.3% effluent. Condition S14.C of the Individual Permit provides that if a test results show a statistically significant difference in response between the control and the CCEC tests, the test does not comply with the effluent limit for chronic toxicity. SIM Corp. has violated condition S14.B with its May 6, 2014 and early April, 2014 CCEC tests as detailed in the table below:

Table I.J.

<u>Sample Collection Date</u>	<u>Date Test Began</u>	<u>Species/Chronic Test</u>	<u>Test Result</u>
May 5, 2014	May 6, 2014	Fathead minnow (<i>Pimephales promelas</i>) growth	Statistically significant biological responses were detected below the CCEC for the fathead minnow (<i>Pimephales promelas</i>) growth endpoint.
March 31, 2015	Early April, 2015	Alga	Statistically significant difference in response between the control and the CCEC tests.

K. Near shore loading area evaluation and maintenance.

Condition S15 of the Individual Permit states that all near shore loading and unloading activities shall be performed in a way to prevent material from spilling or dropping into the water, that SIM Corp. shall inspect annually all near-shore barge loading and unloading areas and remove any metal debris found on the bottom and along the banks of the Lower Duwamish Waterway, and that SIM Corp. must promptly conduct an investigation and cleanup if material does fall into the Waterway. Condition S15 further requires SIM Corp. to submit an annual report to Ecology on July 1, 2014 and annually thereafter that details the findings of the annual near-shore inspection and cleanup, including pre- and post-cleanup conditions; methods and BMPs used during the cleanup; evaluation of the BMPs being utilized currently on site and BMPs needed to improve loading/unloading activities to prevent material spills; a discussion on industry standards preventive BMPs and a schedule for implementation of those BMPs.

SIM Corp. is in violation of condition S15 of the Individual Permit. All near shore loading and unloading activities at the 601 Facility are not performed in a way to prevent material from spilling or dropping into the water as required, as shown by the repeated incidents of scrap and debris dropping into the water summarized in section I.E of this Notice Letter, above. The "dock shields" and net/canvas SIM Corp. has employed are inadequate, including because they are too small, improperly placed during loading and unloading, and improperly designed.

SIM Corp. did not conduct an annual near shore cleanup prior to July 1, 2014, as required by the Individual Permit. SIM Corp.'s 2014 Near Shore Inspection Report (dated November 18, 2014).

SIM Corp.'s 2014 Near Shore Inspection Report violates condition S15 because it does not detail any annual cleanup, post-cleanup conditions, methods and BMPs used during cleanup, BMPs needed to improve loading/unloading activities to prevent material spills, and does not include the required discussion on industry standards preventive BMPs and a schedule for implementation of those BMPs.

SIM Corp.'s 2015 Near Shore Inspection Report also violates condition S15 because it does not detail any annual cleanup, post-cleanup conditions, methods and BMPs used during cleanup, BMPs needed to improve loading/unloading activities to prevent material spills, and does not include the required discussion on industry standards preventive BMPs and a schedule for implementation of those BMPs. The 2015 Near Shore Inspection report does not identify any BMPs beyond those identified in the 2014 Near Shore Inspection Report. The 2015 Near Shore Inspection report asserts that if a spill occurs, the supervisor would institute recovery procedures, but fails to indicate what such procedures are, as required by condition S15 of the Individual Permit. In addition, the 2015 Near Shore Inspection Report states that SIM Corp. will not cleanup material that falls into the waterway; this violates condition S15 of the Individual Permit.

II. General Permit Violations at the 730 Facility.

A. Compliance with standards

i. Condition S10.A. of the General Permit prohibits discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA and Washington's efforts to protect clean water. In particular, water quality standards represent the U.S. Environmental Protection Agency ("EPA") and Ecology's determination, based on scientific studies, of the thresholds at which pollution starts to cause significant adverse effects on fish or other beneficial uses. For each water body in Washington, Ecology designates the "beneficial uses" that must be protected through the adoption of water quality standards.

A discharger must comply with both narrative and numeric criteria water quality standards. WAC 173-201A-010; WAC 173-201A-510 ("No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter.") Narrative water quality standards provide legal mandates that supplement the numeric criteria. Furthermore, the narrative water quality standard applies with equal force even if Ecology has established a numeric water quality standard.

The 730 Facility discharges to the Duwamish Waterway via the City of Seattle storm sewer system. The 730 Facility discharges stormwater that contains elevated levels of PCBs, zinc, copper, lead, turbidity, total petroleum hydrocarbons (TPH), and oil, as indicated in the

table of benchmark exceedances and additional discharge monitoring data below. These discharges cause and/or contribute to violations of water quality standards for PCBs, zinc, copper, lead, turbidity, total petroleum hydrocarbons (TPH), and aesthetic visual criteria in the Duwamish Waterway and have occurred each and every day since SIM Corp. received General Permit coverage for the 730 Facility on which there was 0.1 inch or more of precipitation, and continue to occur. Precipitation data from King County International Airport is appended to this notice of intent to sue and identifies these days.

Table II.A.i.

Quarter in which sample collected Sample point	Zinc Concentration (Benchmark: 117 µg/L)		Copper Concentration (Benchmark: 14 µg/L)		Lead (Benchmark 81.6 µg/L)		Turbidity (Benchmark: 25 NTU)		TPH (Benchmark: 10 mg/L)	
	GP1	GP2	GP1	GP2	GP1	GP2	GP1	GP2	GP1	GP2
1Q2012	3510	1880	778	338			2070	1200		
2Q2012	568	6360	153	1050			412	4620		10.4
3Q 2012										
4Q 2012	3180 779	597 806	693 68	110 93	704 60.5	88.7 76.6	1240 50.6	458 428		
	Avg. 1979.5	Avg. 701.5	Avg. 380.5	Avg. 101.5	Avg. 382.25	Avg. 82.65	Avg. 645.3	Avg. 443		
2Q2013		920	32.8 50.0	159 18		149		236		11
		Avg. 485.5	Avg. 41.4	Avg. 88.5				Avg. 122.6		
3Q 2013	471	1820	68.9	235	89	288	210	980		
4Q 2013	147		33.3				45.3			
1Q 2014	272	128 1570	31.2 46.8	40.5 219		169	26 92.5	26.5 1650		
	Avg. 183.5	Avg. 849	Avg. 39	Avg. 129.75		Avg. 88.65	Avg. 59.25	Avg. 838.25		
4Q 2014			15.9							
1Q 2015	127		37.5				50.6			
4Q 2015	328		78.3				225			
1Q 2016	234		28.9				59.5			
3Q 2016	545		35.7				311			
4Q 2016	328		73.2				254		111	
1Q 2017	143 256		56.5 50.5				79.7 122			

In addition the 730 Facility exceeded oil sheen benchmark (no visible oil sheen) when it discharged stormwater containing a visible oil sheen during first and second quarters of 2012 and first quarter 2014.

SIM Corp. also reports that it exceeded the zinc, copper, lead, TPH and turbidity benchmarks in second quarter 2014, and that it exceeded zinc, lead, TPH, and turbidity benchmarks in fourth quarter 2014, although it failed to produce monitoring data.

SIM Corp. also discharged stormwater containing 1.11 µg/L total PCBs from the 730 Facility on November 30, 2016, as shown on its laboratory report dated December 9, 2016.

ii. Condition S10.C. of the General Permit requires SIM Corp. to apply AKART to all discharges, including preparation and implementation of an adequate SWPPP and best management practices (“BMPs”). SIM Corp. has violated and continues to violate this condition by failing to apply AKART to its discharges or to implement an adequate SWPPP and BMPs as evidenced by the elevated levels of pollutants in its discharge indicated in subsection II.A.i, above and as described below in this Notice of Intent to Sue.

B. TSS Effluent Limitation

Condition S6.C.1 of the General Permits requires discharges from the 730 Facility to comply with a maximum daily effluent limitation for total suspended solids (TSS) of 30 mg/L. SIM Corp. violated condition S6.C.1.c by discharging concentration of TSS in excess of 30 mg/L on the dates shown in Table II.B below:

Table II.B

Month during which sample was collected	TSS concentration (mg/L) (daily maximum limit: 30 mg/L)
November, 2016	48
December, 2016	39
March, 2017	38

In addition to the dates identified above, BP has violated the condition S6.C.1 TSS effluent limit of the Permits each day during the last five years during which there was 0.1 inch of precipitation or more at the facility. Precipitation data from King County International Airport for that time period is appended to this notice of intent to sue and identifies these days.

C. Sampling

Condition S4.A. and B. of the General Permit require SIM Corp. to collect stormwater samples no less than once per quarter. Condition S9.A. of the General Permit requires SIM Corp. to report results of analysis of these samples to Ecology on DMRs on a specified schedule. SIM Corp. has violated these conditions by failing to collect stormwater samples in, and/or to submit DMRs for the third quarter of 2012, first quarter of 2013, second and third quarters of 2014, second and third quarters 2015, and second quarter 2016.

D. Corrective actions

i. Condition S8.B. of the General Permit requires SIM Corp. to undertake a Level 1 corrective action whenever it exceeds a benchmark value identified in Condition S5. A Level 1 corrective action comprises review of the SWPPP to ensure permit compliance, revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark values in future discharges, including signature and certification of the revised SWPPP, summary of the Level 1 corrective action in the annual report, and full implementation of the revised SWPPP as soon as possible, but no later than the DMR due date for the quarter the benchmark was exceeded. SIM Corp. is in violation of this requirement because it failed to perform Level 1 corrective actions as specified by the General Permit for each of the exceedances of the benchmarks identified in section II.A.i. of this Notice of Intent to Sue.

ii. Condition S8.C. of the General Permit requires SIM Corp. to undertake a Level 2 corrective action whenever it exceeds a benchmark value for any two quarters during a calendar year. A Level 2 corrective action comprises review of the SWPPP to ensure permit compliance, revision of the SWPPP to include additional structural source control BMPs with the goal of achieving the benchmark in future discharges, including signature and certification of the revised SWPPP in accordance with Condition S3.A.6., summary of the Level 2 corrective action (planned or taken) in the annual report, and full implementation of the revised SWPPP as soon as possible, including installation of necessary structural source control BMPs.

In 2012, SIM Corp. triggered Level 2 corrective action requirements for zinc, copper lead, oil sheen, and turbidity by exceeding the benchmarks for these parameters (see Condition S5.A.) as indicated in section II.A.i. of this Notice of Intent to Sue. SIM Corp. has violated the General Permit's Level 2 corrective action requirements by failing to take all of the prescribed measures, and to do so as soon as possible.

In 2013, SIM Corp. triggered Level 2 corrective action requirements for zinc, copper and turbidity by exceeding the benchmarks for these parameters (see Condition S5.A.) as indicated in section II.A.i. of this Notice of Intent to Sue. SIM Corp. has violated the General Permit's Level 2 corrective action requirements by failing to take all of the prescribed measures, and to do so as soon as possible.

In 2014, SIM Corp. triggered Level 2 corrective action requirements for zinc, copper, lead, TPH, and turbidity by exceeding the benchmarks for these parameters (see Condition S5.A.) as indicated in section II.A.i. of this Notice of Intent to Sue. SIM Corp. has violated the General Permit's Level 2 corrective action requirements by failing to take all of the prescribed measures, and to do so as soon as possible.

In 2015, SIM Corp. triggered Level 2 corrective action requirements for zinc, copper, and turbidity by exceeding the benchmarks for these parameters (see Condition S5.A.) as indicated in section II.A.i. of this Notice of Intent to Sue. SIM Corp. has violated the General

Permit's Level 2 corrective action requirements by failing to take all of the prescribed measures, and to do so as soon as possible.

In 2016, SIM Corp. triggered Level 2 corrective action requirements for zinc, copper, and turbidity by exceeding the benchmarks for these parameters (see Condition S5.A.) as indicated in section II.A.i. of this Notice of Intent to Sue. SIM Corp. has violated the General Permit's Level 2 corrective action requirements by failing to take all of the prescribed measures, and to do so as soon as possible.

iii. Condition S8.D of the General Permit requires SIM Corp. to undertake a Level 3 corrective action each time quarterly stormwater sample results exceed an applicable benchmark value for any three quarters during a calendar year.

A Level 3 corrective action requires that SIM Corp.: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the General Permit; (2) make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and additional operational and/or structural source control BMPs if necessary for proper function and maintenance of treatment BMPs, and sign and certify the revised SWPPP in accordance with Condition S3.A.6 of the General Permit; and (3) summarize the Level 3 corrective action (planned or take) in the Annual Report required under Condition S9.B of the General Permit, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed. Condition S8.D.2.b of the General Permit requires that a licensed professional engineer, geologist, hydrogeologist, or certified professional in storm water quality must design and stamp the portion of the SWPPP that addresses stormwater treatment structures or processes.

Condition S8.D.3 of the General Permit requires that, before installing BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, SIM Corp. submit an engineering report, plans, and specifications, and an operations and maintenance manual to Ecology for review in accordance with chapter 173-204 of the Washington Administrative Code. The engineering report must be submitted no later than the May 15 prior to the Level 3 corrective action deadline. The plans and specifications and the operations and maintenance manual must be submitted to Ecology at least 30 days before construction/installation.

Condition S8.D.5 of the General Permit requires Defendant fully implement the revised SWPPP according to condition S3 of the General Permit and the applicable stormwater management manual as soon as possible, and no later than September 30th of the following year.

SIM Corp. has violated the requirements of the General Permit described above by failing to conduct a Level 3 corrective Action in accordance with permit conditions, including the required review, revision and certification of the SWPPP, including the requirement to have a specified professional design and stamp the portion of the SWPPP pertaining to

treatment, the required implementation of additional BMPs, including additional treatment BMPs, the required submission of an engineering report, plans, specifications, and an operations and maintenance plan, and the required summarization in the annual report each time since the 730 Facility obtained coverage under the General Permit (on or about May 31, 2011) its quarterly stormwater sampling results were greater than a benchmark for any three quarters during a calendar year. As indicated in subsection II.A.i, above, these violations include, but are not limited to, SIM Corp.'s failure to fulfill these obligations for zinc, copper, and turbidity triggered by its stormwater sampling and discharged during calendar years 2012, 2013, 2014, and 2016, and for lead triggered by its stormwater sampling and discharges during calendar year 2014.

By letter dated November 22, 2013, Ecology specifically conditioned its approval of the Engineering Report SIM Corp. submitted on October 1, 2013 on SIM Corp.'s submittal of a final engineering report and AKART analysis, including stormwater treatment system and sizing calculations after collection of appropriate data and provision of operational and structural source control BMPs for long term operations of the 730 Facility, by May 1, 2015. In addition, SIM Corp. was to implement enhanced treatment, such as a settling tank and/or sand filter as an interim measure if SIM Corp. exceeded the turbidity benchmark in two consecutive quarters. However, SIM Corp. has not been relieved of the General Permit's Level 3 requirements or deadlines (such as by application for and receipt of a modification of coverage request, summarized at condition S8.D.5.a-c.). Furthermore, SIM Corp. has failed to submit a final engineering report and AKART analysis with the information to Ecology by May 1, 2015, as acknowledged in Ecology's Order dated September 19, 2016, and SIM Corp. exceeded the turbidity benchmark in two consecutive quarters (fourth quarter 2013 and first quarter 2014), as indicated in subsection II.A.i, above. SIM Corp. is in ongoing violation of the Level 3 requirements of the General Permit.

III. Conclusion


The above-described violations reflect those indicated by the information currently available to Soundkeeper. Each of the violations described in this Second Supplemental Notice of Intent to Sue is ongoing. Soundkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue. Under Section 309(d) of the CWA, 33 USC §§ 1319(d) and 1365(a), and 40 C.F.R. §§ 19 and 19.4, each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day for each violation for violations committed through November 2, 2015 and up to \$51,570 per day for each violation committed thereafter. In addition to civil penalties, Soundkeeper will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Soundkeeper believes that this Notice of Intent to Sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Seattle Iron & Metals Corp. under Section 505(a) of the Clean Water Act

for violations at the 601 Facility and the 730 Facility, or amend the complaint in the pending litigation to include allegations of these violations.

Sincerely,

SMITH & LOWNEY, PLLC

By: 
Claire E. Tonry
Richard A. Smith

cc: Scott Pruitt, Administrator, U.S. EPA
Michelle Pirzadeh, Region 10 Acting Administrator, U.S. EPA
Maia Bellon, Director, Washington Department of Ecology
David A. Ellenhorn, Registered Agent (901 5th Ave., Ste. 3500, Seattle, WA 98164)
Steve Parkinson, Joyce Ziker Parkinson, PLLC (1601 Fifth Avenue, Suite 2040
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May 11, 2017

RECEIVED ON:

MAY 15 2017

**EPA Region 10
Office of the Regional Administrator**

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The Cleary Law Group, PC
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Hayden, ID 83835

Re: Midnite Mine Superfund Site, Spokane Indian Reservation, WA, RD/RA Consent Decree, No. CV-05-020-JLQ; Notice of Change of Contact Information for Supervising Contractor.

Dear Sir or Madam:

On September 30, 2011, the United States lodged a Consent Decree in the above-captioned case. On October 14, 2011, pursuant to Paragraph 9 and 39 of the Consent Decree, the Settling Defendants proposed Mr. Louis Miller as the Supervising Contractor.

This letter is to document Mr. Miller's current employer and contact information has changed from that which was provided in the October 14, 2011 letter. Mr. Miller's current employer and contact information is:

RECEIVED ON:

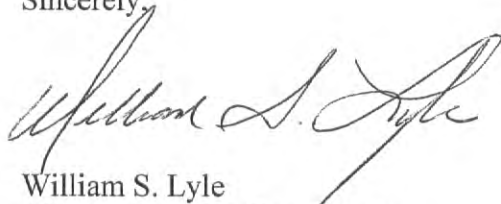
MAY 7 1987

Office of the Regional Administrator
EPA Region 10

Louis Miller
Principal Engineer
Worthington Miller Environmental, LLC
1027 W. Horsetooth Road, Suite 200
Fort Collins, CO 80526
Telephone: (970) 672-8770
Email: lou.miller@wm-env.com

I am happy to address any questions you may have concerning these notifications.

Sincerely,

A handwritten signature in black ink, appearing to read "William S. Lyle". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William S. Lyle
Alternate Project Coordinator

